

Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

≡ Navigation



DISCUSSION KICK-OFF

Reforms of the World Health Organization in light of the Ebola crisis in West Africa: More delegation, more teeth?

PEDRO VILLARREAL — 26 August, 2015



The 68th World Health Assembly took place from 18 to 26 May, 2015. The Assembly is the maximum decision-making organ of the World Health Organization (WHO). In this forum, there were calls for institutional reform in light of the belated response to the Ebola crisis in West Africa.

More recently, an Ebola Interim Assessment Panel Report was published, containing concrete proposals to reform

some of WHO's legal mechanisms for health emergencies response.

I will focus on two of these proposals. First, there is the issue of the power of the WHO Director-General to declare a Public Health Emergency of International Concern. Second, I will briefly mention some questions about the legal weight of temporary recommendations for WHO Member States in case of emergencies.

WHO gets to push the alarm button and when?

The response to the current Ebola crisis in West Africa has been the source of various criticisms directed at the international community in general, and at WHO in particular. One of the most salient criticisms concerns the delay with which the WHO Director-General declared a Public Health Emergency of International Concern. This legal figure is established in Article 12 of the International Health Regulations (2005).

Some of the legal consequences related to the declaration of a Public Health Emergency of International Concern consist of Member States being required to, among other things, immediately report any occurrence of the disease within a country's borders (Article 6 of the International Health Regulations), as well as answering WHO's requests of information on epidemiological data (Article 19(c)). These legal obligations do not vary greatly between 'normal' and 'emergency' periods.

Moreover, these declarations of public health emergencies have various factual consequences, given that they function as a 'distress signal' for the international community. They

raise awareness about the potential spread of a disease beyond geographical borders, and can also motivate a call for the deployment of extraordinary resources for the crisis, as it happened during the Ebola crisis.

Despite the fact that both Guinea and Médecins sans Frontières (MSF) informed the WHO of the outbreak since March and April, 2014 respectively, the declaration in question only happened until 8 August, 2014.

The explanation of why this delay occurred is still more or less a contested matter. Nevertheless, there are statements by WHO officials arguing that the delay was grounded on a (mis)calculation of the economic damage it would inflict upon the affected countries. This raises some questions about the degree of discretion when deciding not to declare a Public Health Emergency of International Concern.

Article 12(4) of the International Health Regulations (2005) establishes the requisite of convening an Emergency Committee for determining whether there is sufficient basis for emitting such a declaration. However, it is unclear whether this is necessary for deciding *not* to do so. The wording of Article 12(2) stipulates that “if the Director-General considers, based on an assessment under these Regulations, that a public health emergency of international concern is occurring...[he/she] shall...seek the views of the [Emergency] Committee...” Yet there is no clear-cut provision related to how the decision of not issuing the declaration should be taken.

Both during the 68th World Health Assembly, and afterwards in the Ebola Interim Assessment Panel Report (paras. 31-34), there was a proposal to create a new centre or program for

health emergencies. It is still unclear to what extent this new organ will have autonomy from the WHO Director-General.

On one hand, if the decision to declare -or not- the presence of a Public Health Emergency of International Concern still lies with the WHO Director-General, then ultimately the structure will not look so differently from the current one. In terms of decision-making, the new centre or program would then have an advisory status much like the Emergency Committee.

On the other hand, if this new centre or program has full autonomy and possesses the power to declare the presence of an emergency, it would further contribute to a fragmentation of functions within the WHO. This, in turn, would also require an extensive reform of the current version of the International Health Regulations.

It is still uncertain, even for some experts, whether emitting this declaration earlier would have amounted to eliminating the outbreak altogether. However, these alerts can and do make a difference in the international efforts to contain the spread of infectious diseases. Therefore, their relevance for dealing with events like the recent Ebola crisis should not be underestimated.

Recommendations that are anything but: Giving WHO more 'teeth'

Another point of discussion was the issue about the (non) observance of WHO's temporary recommendations in the case of the Ebola Public Health Emergency of International Concern. These recommendations stated, *inter alia*, that countries were not to impose general travel or trade bans

against the West African countries stricken with Ebola. Nevertheless, according to the Ebola Interim Assessment Panel Report (para. 17), roughly a quarter of WHO Member States ignored this part of the temporary recommendations.

Against this backdrop, one proposal has been mentioned within the aforementioned Report (para. 19): To contemplate the possibility of sanctions in case of non-compliance with temporary technical recommendations. While it does not explicitly say so, it is implied by the arguments that adopting trade and travel restrictions “that were not called for by WHO” (para. 17), amount to “inappropriate and unjustified actions under the Regulations” (para. 19).

The frustration with certain WHO Member States’ excessive measures is understandable, particularly since they might have actually worsened the conditions for responding to the Ebola outbreak. However, the solution in question might be a bit too far-reaching.

Firstly, delegating such legal capacity to the WHO Director-General would amount to an unprecedented concentration of power in the head of an international organization. Secondly, labeling them *recommendations* would be ‘tongue-in-cheek’ if they are backed by sanctions. Last but not least, the possibility of sanctions could eventually politicize –and not in the good sense– emergency outbreak alerts and responses even more.

Conclusion

Thus far, it is not so evident which mechanisms are best suited for assuming that the lessons of the mishandling of the Ebola crisis were learned. While there is obviously an

urgent need for reform, hasty conclusions are hardly productive. A complex debate is to be expected between WHO Member States once these points are more developed and submitted for public discussion within the World Health Assembly.

It is highly unlikely -though not impossible- that the upcoming reforms will include a strong, sanctions-based model for the International Health Regulations. The same reasons employed back in 2005 for not granting WHO a capacity to *ex officio* sanction Member States will likely reemerge when the new proposals are discussed.

This does not imply that without these 'strong' components, any reform will be meaningless. There are still several procedural tweaks that could improve the decision-making structure in the case of public health emergencies of international concern. Be it the creation of the new centre for health emergencies, or more detailed procedural aspects for declaring an emergency or not doing so, there is still enough room for improvement.

That being said, whatever reforms emerge as 'victorious', we ought to be aware of their ramifications for future events. This can only happen through an analytical perspective capable of looking beyond, whilst not losing sight over the current conjuncture.

Pedro Villarreal is a PhD student at the Institute of Legal Research of the National Autonomous University of Mexico (UNAM).

A response to this post can be found [here](#).



ISSN 2510-2567

Tags: *International Health Regulation, WHO*



Print



Facebook



Twitter



Email

Related

The WHO's
Institutional and Legal
Role in Communicable
Disease Epidemics:
From Pandemic
Influenza to Zika
25 April, 2016
In "International
Health Governance"

The WHO's new
emergency powers –
from SARS to Ebola
22 August, 2014
In "Discussion"

Creating Legal Effects
for the WHO's
International Health
Regulations (2005) –
Which way forward?
13 April, 2016
In "International
Health Governance"

PREVIOUS POST



Practitioner's Corner: MONUSCO – an inside view
into a peacekeeping mission

NEXT POST

The pandemic dilemma



No Comment

Leave a reply

Logged in as [ajv2016](#). [Log out?](#)

SUBMIT COMMENT

☐ Notify me of follow-up comments by email.

☐ Notify me of new posts by email.